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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-848*

13 **BRIAN ALAN GOSNEY**  
14 **3645 Park Blvd., #318**  
15 **San Diego, CA 92103**

**A C C U S A T I O N**

16 **Registered Nurse License No. 612334**

17 Respondent.

18 Complainant alleges:

**PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about January 27, 2003, the Board of Registered Nursing issued Registered  
23 Nurse License Number 612334 to Brian Alan Gosney (Respondent). The Registered Nurse  
24 License was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on October 31, 2014, unless renewed.

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1 evidence of the fact that the conviction occurred, but only of that fact, and the board  
2 may inquire into the circumstances surrounding the commission of the crime in  
order to fix the degree of discipline or to determine if the conviction is substantially  
related to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
4 'registration.'

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse  
or deny an application for a certificate or license for any of the following:

7 (a) Unprofessional conduct, which includes, but is not limited to, the  
8 following:

9 ...

10 (f) Conviction of a felony or of any offense substantially related to the  
11 qualifications, functions, and duties of a registered nurse, in which event the record  
of the conviction shall be conclusive evidence thereof.

12 ....

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the  
15 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a  
person licensed under this chapter to do any of the following:

16 ....

17 (b) Use any controlled substance as defined in Division 10 (commencing with  
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
19 device as defined in Section 4022, or alcoholic beverages, to an extent or in a  
manner dangerous or injurious to himself or herself, any other person, or the public  
or to the extent that such use impairs his or her ability to conduct with safety to the  
public the practice authorized by his or her license.

20 (c) Be convicted of a criminal offense involving the prescription,  
21 consumption, or self-administration of any of the substances described in  
22 subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
record pertaining to, the substances described in subdivision (a) of this section, in  
which event the record of the conviction is conclusive evidence thereof.

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2 11. Section 4022 of the Code states:

3 "Dangerous drug" or "dangerous device" means any drug or device unsafe for  
4 self-use, except veterinary drugs that are labeled as such, and includes the  
5 following:

6 (a) Any drug that bears the legend: "Caution: federal law prohibits  
7 dispensing without prescription," "Rx only," or words of similar import.

8 (b) Any device that bears the statement: "Caution: federal law restricts this  
9 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of  
10 similar import, the blank to be filled in with the designation of the practitioner  
11 licensed to use or order use of the device.

12 (c) Any other drug or device that by federal or state law can be lawfully  
13 dispensed only on prescription or furnished pursuant to Section 4006.

#### 14 REGULATORY PROVISIONS

15 12. California Code of Regulations, title 16, section 1444, states:

16 A conviction or act shall be considered to be substantially related to the  
17 qualifications, functions or duties of a registered nurse if to a substantial degree it  
18 evidences the present or potential unfitness of a registered nurse to practice in a  
19 manner consistent with the public health, safety, or welfare. Such convictions or  
20 acts shall include but not be limited to the following:

21 (a) Assaultive or abusive conduct including, but not limited to, those  
22 violations listed in subdivision (d) of Penal Code Section 11160.

23 (b) Failure to comply with any mandatory reporting requirements.

24 (c) Theft, dishonesty, fraud, or deceit.

25 (d) Any conviction or act subject to an order of registration pursuant to  
26 Section 290 of the Penal Code.

27 13. California Code of Regulations, title 16, section 1445(b), states:

28 When considering the suspension or revocation of a license on the grounds  
that a registered nurse has been convicted of a crime, the board, in evaluating the  
rehabilitation of such person and his/her eligibility for a license will consider the  
following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation,  
restitution or any other sanctions lawfully imposed against the licensee.

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1 (5) If applicable, evidence of expungement proceedings pursuant to Section  
1203.4 of the Penal Code.

2 (6) Evidence, if any, of rehabilitation submitted by the licensee.

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4 **COST RECOVERY**

5 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
6 administrative law judge to direct a licensee found to have committed a violation or violations of  
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case, with failure of the licensee to comply subjecting the license to not being  
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
10 included in a stipulated settlement.

11 **DRUGS**

12 15. Amphetamine is a Schedule II controlled substance pursuant to Health and Safety  
13 Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions  
14 Code section 4022.

15 16. Methamphetamine is a Schedule II controlled substance pursuant to Health and  
16 Safety Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and  
17 Professions Code section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(October 15, 2012 Criminal Conviction for DUI on June 29, 2011)**

20 17. Respondent is subject to disciplinary action under Code sections 490 and 2761,  
21 subdivision (f) of the Code, in that he was convicted of a crime substantially related to the  
22 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

23 18. On or about October 15, 2012, in a criminal proceeding entitled *People of the State of*  
24 *California v. Brian Alan Gosney*, in the Superior Court of California, County of Los Angeles, in  
25 Case No. 1BF03713, Respondent was convicted on his plea of nolo contendere of violating  
26 Vehicle Code section 23152(a) (DUI), to wit: Amphetamine and Methamphetamine, a  
27 misdemeanor. As a result of a plea bargain, a count for violating Vehicle Code section  
28 14601.1(a) (driving when privilege suspended or revoked), a misdemeanor, was dismissed.

1           19. As a result of the conviction, the Court placed Respondent on three years summary  
2 probation, ordered him obey all laws and orders of the Court, pay various fees and fines, enroll in  
3 and complete a 3-month First Offender Alcohol and Other Drug Education and Counseling  
4 Program and a MADD Impact Panel, not drive any vehicle with any measurable amount of  
5 alcohol or drugs in his blood or refuse to take and complete any blood alcohol or drug chemical  
6 test, any field sobriety test, and any preliminary alcohol screening test when requested by any  
7 peace officer, perform 145 hours of community service or 9 days of community labor, and to  
8 show proof of enrollment in the 3-month First Offender Alcohol/Drug Program and the MAAD  
9 Impact Panel by November 15, 2012. Respondent failed to comply with the terms of probation  
10 when he failed to show proof of enrollment in the First Offender Alcohol/Drug program and on  
11 December 4, 2012, a bench warrant was issued for his arrest. Said warrant remains outstanding.

12           20. The circumstances that led to Respondent's conviction are that on June 29, 2011, at  
13 approximately 1:30 p.m., California Highway Patrol Officers, while driving northbound on I-5  
14 south of Firestone Blvd. in the City of Norwalk, California, observed a vehicle traveling  
15 northbound on I-5 in the #2 lane at approximately 65 mph drift to the right side and straddle the  
16 #2 and #3 lanes, then violently jerk back and forth within its lane. Officers conducted a traffic  
17 stop of the vehicle and made contact with the driver (Respondent). Officers observed that  
18 Respondent displayed objective symptoms of drug influence due to his jerking movements with  
19 his hands and arms within the driver's seat, and observed that Respondent was folding his lips  
20 inward, then pushing his tongue out of his mouth over his lips and jerking his head toward his  
21 right and left shoulders. Officers had Respondent exit his vehicle to perform field sobriety tests,  
22 which he failed. Officers observed Respondent constantly mumbled while spoke and made  
23 several jerking movements with his arms as he sucked on his lips pushing his tongue out of his  
24 mouth. A records check of Respondent revealed that he was driving on a suspended license.  
25 Officers arrested Respondent for driving while under the influence of controlled substances and  
26 transported to the Santa Fe Springs CHP Office for a Drug Recognition Evaluation. Respondent  
27 provided officers with a urine sample which tested positive for amphetamine and  
28 methamphetamine.

21. In or about 2012 the Board received notification of Respondent's June 29, 2011 arrest and referred the matter to the Division of Investigation (DOI). An investigation conducted by DOI revealed that Respondent failed to appear for a court date pursuant to his arrest and that a bench warrant in the amount of \$40,000 was issued on January 3, 2012.

22. On or about October 8, 2012, DOI contacted Respondent and scheduled an interview for October 10, 2012. On October 10, 2012, DOI confirmed that the warrant was still active. On the same date, Respondent came to the DOI office for the interview and was arrested on the active warrant following the interview.

## SECOND CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Use of Alcohol in a Manner Dangerous  
or Injurious to Self or Others)**

23. Respondent is subject to disciplinary action for unprofessional conduct under Code section 2762, subdivision (b), in that on June 29, 2011, he used controlled substances to an extent or in a manner that was dangerous to himself and the public when he drove a motor vehicle while under the influence of amphetamine and methamphetamine, as is more fully detailed at paragraphs 17-22, above, which are incorporated here by reference.

### THIRD CAUSE FOR DISCIPLINE

**(Unprofessional Conduct – Conviction of a Drug-Related Crimes)**

24. Respondent is subject to disciplinary action for unprofessional conduct under Code section 2762, subdivision (c), in that on October 15, 2012, he was convicted of a criminal offense involving the consumption of controlled substances, as set forth in paragraphs 17-22, above, which are incorporated here by reference.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 612334 issued to Brian Alan Gosney;

2. Ordering Brian Alan Gosney to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3;


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3. Taking such other and further action as deemed necessary and proper.

DATED:

March 28, 2013



LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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